

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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EDWARDS & ANGELL, LLP,
Plaintiff,

Vs.

HISTATEK, LLC and
HISTATEK, INC.,
Defendants.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 04-11632-DPW

**MOTION FOR DEFAULT JUDGMENT
AGAINST THE DEFENDANT, HISTATEK, INC., PURSUANT TO RULE 55(b)(1)**

Now comes Edwards & Angell, LLP, the Plaintiff in the above-entitled and numbered action, by and through its undersigned attorney, and moves this Honorable Court, pursuant to the provisions of Rule 55(b)(1) of the Federal Rules of Civil Procedure, to enter a default judgment in favor of the Plaintiff and against the Defendant, **Histatek, Inc.**, in accordance with Counts I, II and III of the Plaintiff's Complaint in the amount of **\$359,584.25**, together with legal interest thereon and costs.

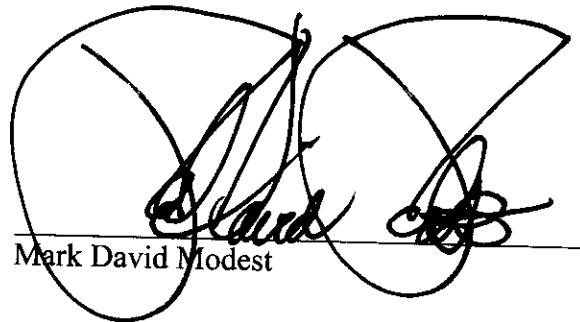
This Motion is made on the grounds that the Defendant, Histatek, Inc., has failed to serve or file a responsive pleading or to otherwise defend as to the Plaintiff's Complaint in this action, the time within which the Defendant, Histatek, Inc., is required to serve a responsive pleading or to otherwise defend as to the Plaintiff's Complaint pursuant to Rule 12 (a) of the Federal Rules of Civil Procedure has expired, and a default was entered against the Defendant, Histatek, Inc.,

CERTIFICATE OF SERVICE

I, Mark David Modest, attorney for Edwards & Angell, LLP, the Plaintiff in the above-entitled and numbered action, hereby certify that I have this date served the foregoing **Motion for Default Judgment Against the Defendant, Histatek, Inc., Pursuant to Rule 55(b)(1)** upon the Defendant, Histatek, Inc., by mailing a copy thereof by first class mail, postage prepaid, addressed to:

Histatek, Inc.
4645 East Cotton Center Boulevard
Building 2, Suite 171
Phoenix, Arizona 85040

Dated: November 8, 2004



Mark David Modest

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF MASS.
NOV 12 P 2:55

EDWARDS & ANGELL, LLP,
Plaintiff,

Vs.

HISTATEK, LLC and
HISTATEK, INC.,
Defendants.

Civil Action No. 04-11632-DPW

AFFIDAVIT OF THOMAS B. CLOONEN

I, Thomas B. Cloonen, being duly sworn, do hereby depose and say that:

1. I am over the age of eighteen (18) years, and I believe in and understand the obligations of an oath.

2. I am the Director of Client Services for Edwards & Angell, LLP ("Edwards & Angell"), a limited liability partnership duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with offices located at 101 Federal Street, Boston, Suffolk County, Massachusetts.

3. I am in charge of all customer accounts and agreements involving Edwards & Angell and I am the Edwards & Angell representative principally responsible for collection of the debt that Histatek, LLC and Histatek, Inc. (the "Defendants") owe to Edwards & Angell.

4. This Affidavit is made in support of Edwards & Angell's Motion for Default Judgment Against the Defendant, Histatek, Inc., Pursuant to Rule 55(b)(1).

5. I make this Affidavit upon my personal knowledge and review of the files and records of the Defendants, Histatek, LLC and Histatek, Inc.

6. As set forth in the Plaintiff's Complaint, between September 1, 2000 and February 29, 2004, Edwards & Angell performed legal work for and rendered legal services to the Defendants, as attorneys at law, and in the course of performing such legal services, advanced and disbursed various sums of money for and on behalf of and for the benefit of the Defendants.

7. The Defendants have failed to pay Edwards & Angell any money due on their accounts for such legal services, costs and expenses, leaving a balance due and unpaid to Edwards & Angell in the amount of \$359,584.25.

8. As of the date hereof, the total amount due to the Edwards & Angell from the Defendants, pursuant to Counts I, II and III of the Plaintiff's Complaint, exclusive of interest and costs, is **\$359,584.25**.

9. The Defendants, either jointly or severally, owe Edwards & Angell the sum of **\$359,584.25**.


Thomas B. Cloonen

STATE OF RHODE ISLAND

County of Providence

SWORN AND SUBSCRIBED TO BEFORE ME UNDER THE PAINS AND
PENALTIES OF PERJURY ON THIS 9th DAY OF NOVEMBER, 2004.

Laura Domenicone
Notary Public

Print Name: Laura Domenicone

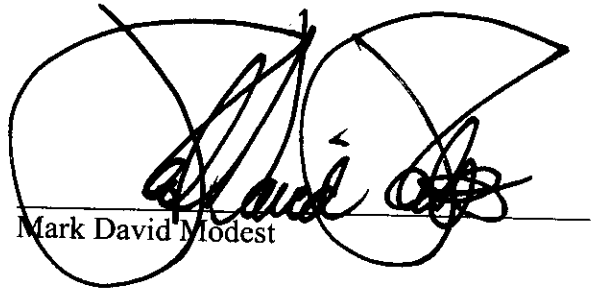
My Commission Expires: 2/22/06

CERTIFICATE OF SERVICE

I, Mark David Modest, attorney for Edwards & Angell, LLP, the Plaintiff in the above-entitled and numbered action, hereby certify that I have this date served the foregoing **Affidavit of Thomas B. Cloonen** upon the Defendant, Histatek, Inc., by mailing a copy thereof by first class mail, postage prepaid, addressed to:

Histatek, Inc.
4645 East Cotton Center Boulevard
Building 2, Suite 171
Phoenix, Arizona 85040

Dated: November 10, 2004



Mark David Modest

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

| | | |
|------------------------|---|-------------------------------|
| _____ |) | |
| EDWARDS & ANGELL, LLP, |) | |
| Plaintiff, |) | |
| |) | |
| Vs. |) | Civil Action No. 04-11632-DPW |
| |) | |
| HISTATEK, LLC and |) | |
| HISTATEK, INC., |) | |
| Defendants. |) | |
| _____ |) | |

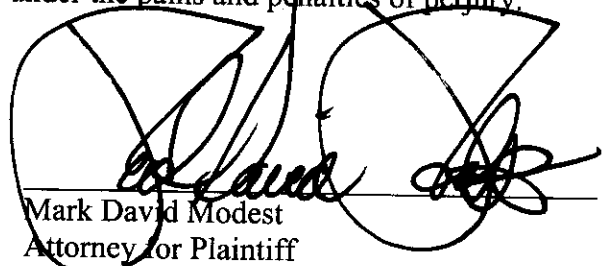
AFFIDAVIT AS TO MILITARY SERVICE

I, Mark David Modest, being duly sworn, do hereby depose and say that:

1. I am the attorney for Edwards & Angell, LLP, the Plaintiff in the above-entitled and numbered action.
2. I have made an investigation to ascertain if any of the Defendants in the above-entitled and numbered action are in the military service of the United States.
3. The Defendant, **Histatek, Inc. (a/k/a Histatek, LLC)**, is not an infant or incompetent person.
4. The Defendant, **Histatek, Inc.**, is not in the military service of the United States or any of its Allies, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, but

is, at present, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, having its principal place of business at 4645 East Cotton Center Boulevard, Phoenix, Arizona.

Subscribed this 8th day of November, 2004 under the pains and penalties of perjury.

A handwritten signature in black ink, appearing to read 'Mark David Modest', is written over a horizontal line. The signature is stylized and cursive.

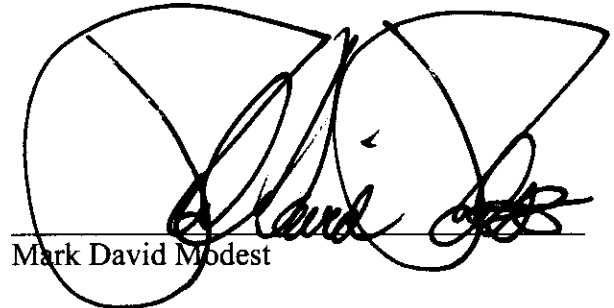
Mark David Modest
Attorney for Plaintiff
188 Oaks Road
Framingham, MA 01702
(508) 820-4333
BBO# 350280

CERTIFICATE OF SERVICE

I, Mark David Modest, attorney for Edwards & Angell, LLP, the Plaintiff in the above-entitled and numbered action, hereby certify that I have this date served the foregoing **Affidavit as To Military Service** upon the Defendant, Histatek, Inc., by mailing a copy thereof by first class mail, postage prepaid, addressed to:

Histatek, Inc.
4645 East Cotton Center Boulevard
Building 2, Suite 171
Phoenix, Arizona 85040

Dated: November 10, 2004



Mark David Modest